

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

AURELIA FERNANDES,
Plaintiff,

vs.

WAYNE HAYES et al.,
Defendants.

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CIVIL ACTION NO. W-11-CA-137

JURY DEMAND

PLAINTIFF'S MOTION TO COMPEL

Plaintiff/Judgment Creditor AURELIA FERNANDES moves the Court for an order requiring Defendants/Judgment Debtors WAYNE HAYES and BETTY HAYES A/K/A BETTY BASKERVILLE A/K/A BETTY CUNNINGHAM to answer 1) Judgment Creditor's Interrogatories in Aid of Enforcement of Judgment, 2) Judgment Creditor's Requests for Production in Aid of Enforcement of Judgment, and 3) Judgment Creditor's Requests for Admission in Aid of Enforcement of Judgment, which were served on each Defendant/Judgment Debtor pursuant to Rules 26, 33, 34, 36, and 69 of the Federal Rules of Civil Procedure. In support of this motion, Plaintiff/Judgment Creditor would respectfully show the Court the following:

1. On April 27, 2012, judgment was entered against the Defendants/Judgment Debtors in this cause. (Dkt. No. 22.) See Exhibit 1.
2. The judgment requires the payment of money in the total amount of \$830,027 (consisting of \$808,897 in damages, \$20,700 in attorney's fees, and \$430 in costs), along with prejudgment and postjudgment interest as allowed by law. No payment has been made on this judgment.
3. On July 26, 2012, Plaintiff/Judgment Creditor sent to each Defendant/Judgment Debtor the following post-judgment discovery requests: Judgment Creditor's Interrogatories in Aid of Enforcement of Judgment, Judgment Creditor's Requests for Production in Aid of

Enforcement of Judgment, and Judgment Creditor's Requests for Admission in Aid of Enforcement of Judgment. These requests were sent to each Defendant/Judgment Debtor by certified mail, return receipt requested. See Exhibits 2-3 (discovery requests), 4 (returned green cards), and 5 (USPS tracking confirmations).

4. Each Defendant/Judgment Debtor's response to the above-referenced requests was due on August 28, 2012.
5. Plaintiff/Judgment Creditor has not received a response to any of the above-referenced requests.
6. After Defendants/Judgment Debtors failed to respond to Plaintiff/Judgment Creditor's post-judgment discovery requests, Plaintiff/Judgment Creditor's counsel attempted to reach Defendants/Judgment Debtors by phone.
7. On February 8, 2013, Plaintiff/Judgment Creditor sent a letter to each Defendant/Judgment Debtor reminding each Defendant/Judgment Debtor that the responses were past due, attaching a courtesy copy of the requests, and informing each Defendant/Judgment Debtor that if no response was provided by February 22, 2013, Plaintiff would move the court for an order compelling such responses. See Exhibits 6-7 (letters); 8 (green receipts); and 9-10 (green cards).
8. On March 4, 2013, Plaintiff/Judgment Creditor's counsel received by certified mail a two-line letter dated February 26, 2013 signed by both Defendants/Judgment Debtors "in response to your letter, case number 6:11-cv-00137." The letter did not offer any response to Plaintiff/Judgment Creditor's post-judgment discovery requests, but implied that none would be provided. See Exhibit 11.

PRAYER

Wherefore, Plaintiff/Judgment Creditor respectfully requests that this Court issue an order granting the following relief:

- a. Compel Defendant/Judgment Debtor WAYNE HAYES to fully and completely respond to Judgment Creditor's Interrogatories in Aid of Enforcement of Judgment, Judgment Creditor's Requests for Production in Aid of Enforcement of Judgment, and Judgment Creditor's Requests for Admission in Aid of Enforcement of Judgment within twenty-one (21) days from the date this motion is granted;
- b. Compel Defendant/Judgment Debtor BETTY HAYES A/K/A BETTY BASKERVILLE A/K/A BETTY CUNNINGHAM to fully and completely respond to Judgment Creditor's Interrogatories in Aid of Enforcement of Judgment, Judgment Creditor's Requests for Production in Aid of Enforcement of Judgment, and Judgment Creditor's Requests for Admission in Aid of Enforcement of Judgment within twenty-one (21) days from the date this motion is granted;
- c. Pursuant to Rule 37, award Plaintiff/Judgment Creditor her costs and fees incurred in resolving this discovery dispute; and
- d. Grant such further relief as the Court deems just and necessary.

Respectfully submitted,

TEXAS RIOGRANDE LEGAL AID, INC.

/s/ Sarah E. Donaldson

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

I, Sarah E. Donaldson, hereby certify that on February 8, 2013, I sent each Defendant/Judgment Debtor a letter via certified mail, return receipt requested, informing each Defendant/Judgment Debtor that if no response to Plaintiff/Judgment Creditor's post-judgment discovery requests was provided by February 22, 2013, Plaintiff/Judgment Creditor would move the court for an order compelling such responses. See Exhibits 6-10 attached to this motion. Defendants sent Plaintiff/Judgment Creditor's counsel a letter (attached to this motion as Exhibit 11), responding to the February 8, 2013 letter and suggesting that no response would be provided. Therefore, Plaintiff/Judgment Creditor assumes that this motion is opposed.

/s/ Sarah E. Donaldson
Sarah E. Donaldson

CERTIFICATE OF SERVICE

I, Sarah E. Donaldson, hereby certify that on March 19, 2013 I caused a true and correct copy of the foregoing motion to be served upon each Defendant/Judgment Debtor via certified mail, return receipt requested and via first-class mail:

VIA CERTIFIED MAIL, RRR NO 7012 2920 0000 3989 4437 AND VIA FIRST-CLASS MAIL:
Wayne Hayes
4406 Misty Lane
Killeen, Texas 76542

VIA CERTIFIED MAIL, RRR NO 7012 2920 0000 3989 4420 AND VIA FIRST-CLASS MAIL:
Betty Hayes a/k/a Betty Baskerville a/k/a Betty Cunningham
4406 Misty Lane
Killeen, Texas 76542

/s/ Sarah E. Donaldson
Sarah E. Donaldson